September 20, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference No.: 04-0105

Ms. Janet Gillis
Gillis Group, Inc. d/b/a Pioneer Supply
2008 Poole Road
Moore, OK 73160

Dear Ms. Gillis:

This is in reference to an appeal of Disadvantaged Business Enterprise (DBE) certification denial concerning your firm, Pioneer Supply ("Pioneer Supply"). We have carefully reviewed the material from the Oklahoma Department of Transportation (OKDOT) and Pioneer Supply and have concluded that the denial of Pioneer Supply's certification as an eligible DBE under criteria set forth on 49 CFR Part 26 ("the Regulation") is supported by substantial evidence.

Your appeal is denied based upon our determination that substantial record evidence supports OKDOT's conclusion that the disadvantaged owner's contribution of capital was not real, substantial and continuing.

Your appeal is also denied based upon substantial record evidence that the socially and economically disadvantaged owner does not possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

The appeal is also denied based upon substantial record evidence that the firm's bylaws restriction hinders the socially and economically disadvantaged owner's ability to control the firm.

The specific reasons for the denial of your appeal include the following:

1) **49 CFR 26§26.69(e) states "The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or**

an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan."

According to the record information Pioneer Supply is an "S" Corporation doing business as a Material Supplier of fire hydrants, water meters and pipe. The record indicates that you acquired the firm in 1991. At that time the firm was called Utility Supply Inc. in Waco, Texas and Moore, Oklahoma. The name was changed to Gillis Group Inc. dba Pioneer Supply and Utility Supply Waco. In 1991 the stock ownership was as follows:

Janet Gillis	7500 shares
Jon Kang	10000 shares
Richard Dei	10000 shares
John & Cleotis Barton	10000 shares

The record reveals that the Waco office was closed and Mr. Kang decided to get out of the business and you purchased his shares. Your shares on March 1992 were 17,500 shares. On January 30, 1994, you purchased Mr. Richard Dei's 10,000 shares in the form of a promissory note for $125,000.00. This gave you a total of 27,500 shares. OKDOT questioned the initial information you submitted which indicates that The Pre-Organization subscription Agreement indicates that you paid $175,000.00 for 17,500 shares. The documentation provided OKDOT only accounts for $37,000.00 which you claimed came from your retirement account. However, you are claiming 17,500 shares of stock although there is no documentation to substantiate that the full amount was ever paid or the source from which the funds for payment derived. According to OKDOT, you stated that the firm took on a partner in 2002 and established G & N Holdings, Inc. The record is void of any information regarding this matter. By letter dated December 15, 2003, OKDOT DBE Reviewer requested that you describe the formation of G & N Holding, Inc. and how the partnership was established. The letter also requested that you explain how you paid for the additional 10,000 shares of stock acquired in 1994; how the dissolution occurred with G & N Holdings, Inc.; and how it was determined who got how many shares in July 2003. There is no record that this information was ever provided.

The record further reveals that the other investors, John and Cleotis Barton, are no longer owners. The only documentation provided of their buyout is a check written to Pioneer supply with the memo "Resolution of Barton Note." The check is drawn on the account of G & B Management, LLC (which at the time was owned 50/50 by both you and William Gillis). The stock transfer ledger indicates that the Barton shares went to Pioneer Supply/Janet Gillis. Based upon the record, it is difficult to conclude that the contribution of capital by the socially and economically disadvantaged owner was real, substantial and continuing.

2) §26.71(d) states "The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and

to make day-to-day as well as long-term decisions on matters of management, policy and operations.

§26.71(g) "The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to experience and expertise in every critical area of the firm's operations. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to functions unrelated to the principal business activities of the firm is insufficient to demonstrate control." The record information reveals that you are the President and is responsible for managing all aspects of Gillis Group, Inc. which includes overseeing day-to-day operations in shipping, billing, accounts receivable, accounts payable, inventory control, collection, general ledger reporting, payroll and new business adventures. You have a B.S. Degree and an MBA from [redacted]. Your previous employment history from 1975 to 1991 indicates that you have worked as a Computer Programmer and Systems Analyst. According to the firm's application, both you and Mr. Gillis share the role of negotiating and contract execution, purchasing of major equipment, and both of you have signature authority. Mr. Gillis is also the guarantor on the Loan Agreement on loan no. [redacted] dated June 30, 2003 in the amount of $500,000.00.

Mr. William H. Gillis, Jr., CEO, is responsible for coordinating sales of water/sewer. According to the record from 1988 to 1991 that he was employed by the [redacted] as Vice President responsible for operations and expense for seven branches that sell pipe and fitting for water and sewer systems. From 1985 to 1988, he was the Branch Manager for [redacted] where he managed the day-to-day operations for the company selling pipe and fittings for water and sewer systems. From 1984 to 1985, he worked for [redacted] where he was Vice President of Operations. He was responsible for overseeing all aspects of the company –installing water and sewer systems.

Kenneth W. Kendrick, non-disadvantaged, is responsible for inventory control and to ensure that inventory is purchased at the best price and that controls are in place to ensure proper movement. He also serves as the contact with vendors and manufacturers to obtain maximum discounts, extended payment terms and volume discounts.

It appears that the persons with the expertise to control this business are non-disadvantaged individuals, namely Messrs. Gillis and Kendrick. We agree with OKDOT's determination that the socially and economically disadvantaged owner does not have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. In addition during the time when the OKDOT Reviewer was making an appointment for the onsite review, the Secretary informed her that you were not in the office and that was not unusual. When the Reviewer was in your office waiting to meet with you during the onsite review, the Reviewer overheard the secretary make a similar statement to another caller.

3) **§26.71(i) (1) state "You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm." (2) states "In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged owner."** The record evidence reveals that you, the socially and economically disadvantaged owner are not receiving a salary commensurate with your ownership interest. During the year 2000 and 2001, the average salaries were: William Gillis [redacted], and Janet Gillis [redacted]. Current salaries reveal that you received [redacted] and William Gillis received [redacted]. When OKDOT inquired as to why the discrepancy, you stated that this was dictated by the market, that generally sales managers make more than manager of the financial part. This appears to confirm the value of Mr. Gillis to the firm. We agree with OKDOT's determination that your compensation is not commensurate to your ownership interest. This is inconsistent with the Department's DBE Regulation.

In summary, the information provided, cumulatively supports a conclusion that Pioneer Supply does not meet the criteria as required for DBE certification under 49 CFR Part 26. The company is, therefore, ineligible to participate as a DBE on Federal financially assisted projects. This determination is administratively final as of the date of this correspondence.

Sincerely,

Original Signed By

Joseph E. Austin, Chief
External Policy and Program Development Division
Departmental Office of Civil Rights

cc: OKDOT